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SENATE BILL 85

43RD LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 1997

INTRODUCED BY

PATRICK H. LYONS

AN ACT

RELATING TO CONTROLLED SUBSTANCES; AMENDING SECTIONS 30-31-22
AND 30-31-23 NMSA 1978 (BEING LAWS 1972, CHAPTER 84, SECTIONS 22
AND 23, AS AMENDED) TO INCREASE PENALTIES FOR CERTAIN OFFENSES.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. Section 30-31-22 NMSA 1978 (being Laws 1972,
Chapter 84, Section 22, as amended) is amended to read:

"30-31-22. CONTROLLED OR COUNTERFEIT SUBSTANCES--
DISTRIBUTION PROHIBITED.--

A. Except as authorized by the Controlled Substances
Act, it is unlawful for any person to intentionally distribute
or possess with intent to distribute a controlled substance or a
controlled substance analog except a substance enumerated in
Schedule I or II that is a narcotic drug or a controlled
substance analog of a controlled substance enumerated in

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1 Schedule I or II that is a narcotic drug. Any person who
2 violates this subsection with respect to:

3 (1) marijuana is:

4 (a) except as provided in Subparagraph (c) of
5 this paragraph, for the first offense, guilty of a fourth degree
6 felony and shall be sentenced pursuant to the provisions of
7 Section 31-18-15 NMSA 1978;

8 (b) for the second and subsequent offenses,
9 guilty of a third degree felony and shall be sentenced pursuant
10 to the provisions of Section 31-18-15 NMSA 1978;

11 (c) for the first offense, if more than one
12 hundred pounds is possessed with intent to distribute or
13 distributed or both, guilty of a third degree felony and shall
14 be sentenced pursuant to the provisions of Section 31-18-15 NMSA
15 1978; and

16 (d) for the second and subsequent offenses,
17 if more than one hundred pounds is possessed with intent to
18 distribute or distributed or both, guilty of a second degree
19 felony and shall be sentenced pursuant to the provisions of
20 Section 31-18-15 NMSA 1978;

21 (2) any other controlled substance enumerated in
22 Schedule I, II, III or IV or a controlled substance analog of a
23 controlled substance enumerated in Schedule I, II, III or IV
24 except a substance enumerated in Schedule I or II that is a
25 narcotic drug or a controlled substance analog of a controlled

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1 substance enumerated in Schedule I or II that is a narcotic
2 drug, is:

3 (a) for the first offense, guilty of a third
4 degree felony and shall be sentenced pursuant to the provisions
5 of Section 31-18-15 NMSA 1978; provided, however, for
6 methamphetamine, its salts, isomers or salts of isomers as
7 enumerated in Schedule II or a controlled substance analog of
8 methamphetamine, its salts or salts of isomers, for the first
9 offense, guilty of a second degree felony and shall be sentenced
10 pursuant to the provisions of Section 31-18-15 NMSA; and

11 (b) for the second and subsequent offenses,
12 guilty of a second degree felony and shall be sentenced pursuant
13 to the provisions of Section 31-18-15 NMSA 1978; and

14 (3) a controlled substance enumerated in Schedule
15 V or a controlled substance analog of a controlled substance
16 enumerated in Schedule V is guilty of a misdemeanor and shall be
17 punished by a fine of not less than one hundred dollars (\$100)
18 or more than five hundred dollars (\$500) or by imprisonment for
19 a definite term not less than one hundred eighty days but less
20 than one year, or both.

21 B. Except as authorized by the Controlled Substances
22 Act, it is unlawful for any person to intentionally create or
23 deliver, or possess with intent to deliver, a counterfeit
24 substance. Any person who violates this subsection with respect
25 to:

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1 (1) a counterfeit substance enumerated in
2 Schedule I, II, III or IV is guilty of a fourth degree felony
3 and shall be sentenced pursuant to the provisions of Section
4 31-18-15 NMSA 1978; and

5 (2) a counterfeit substance enumerated in
6 Schedule V is guilty of a petty misdemeanor and shall be
7 punished by a fine of not more than one hundred dollars (\$100)
8 or by imprisonment for a definite term not to exceed six months,
9 or both.

10 C. Any person who knowingly violates Subsection A or B
11 of this section while within a drug-free school zone, excluding
12 private property residentially zoned or used primarily as a
13 residence, with respect to:

14 (1) marijuana is:

15 (a) except as provided in Subparagraph (c) of
16 this paragraph. for the first offense, guilty of a third degree
17 felony and shall be sentenced pursuant to the provisions of
18 Section 31-18-15 NMSA 1978;

19 (b) for the second and subsequent offenses,
20 guilty of a second degree felony and shall be sentenced pursuant
21 to the provisions of Section 31-18-15 NMSA 1978;

22 (c) for the first offense, if more than one
23 hundred pounds is possessed with intent to distribute or
24 distributed or both, guilty of a second degree felony and shall
25 be sentenced pursuant to the provisions of Section 31-18-15 NMSA

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1 1978; and

2 (d) for the second and subsequent offenses,
3 if more than one hundred pounds is possessed with intent to
4 distribute or distributed or both, guilty of a first degree
5 felony and shall be sentenced pursuant to the provisions of
6 Section 31-18-15 NMSA 1978;

7 (2) any other controlled substance enumerated in
8 Schedule I, II, III or IV or a controlled substance analog of a
9 controlled substance enumerated in Schedule I, II, III or IV
10 except a substance enumerated in Schedule I or II that is a
11 narcotic drug or a controlled substance analog of a controlled
12 substance [~~enumerated~~] enumerated in Schedule I or II that is a
13 narcotic drug, is:

14 (a) for the first offense, guilty of a second
15 degree felony and shall be sentenced pursuant to the provisions
16 of Section 31-18-15 NMSA 1978; and

17 (b) for the second and subsequent offenses,
18 guilty of a first degree felony and shall be sentenced pursuant
19 to the provisions of Section 31-18-15 NMSA 1978;

20 (3) a controlled substance enumerated in Schedule
21 V or a controlled substance analog of a controlled substance
22 enumerated in Schedule V is guilty of a fourth degree felony and
23 shall be sentenced pursuant to the provisions of Section
24 31-18-15 NMSA 1978; and

25 (4) the intentional creation, delivery or

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1 possession with the intent to deliver:

2 (a) a counterfeit substance enumerated in
3 Schedule I, II, III or IV is guilty of a third degree felony and
4 shall be sentenced pursuant to the provisions of Section
5 31-18-15 NMSA 1978; and

6 (b) a counterfeit substance enumerated in
7 Schedule V is guilty of a misdemeanor and shall be punished by a
8 fine of not less than one hundred dollars (\$100) nor more than
9 five hundred dollars (\$500) or by imprisonment for a definite
10 term not less than one hundred eighty days but less than one
11 year, or both.

12 D. Notwithstanding the provisions of Subsection A of
13 this section, distribution of a small amount of marijuana for no
14 remuneration shall be treated as provided in Paragraph (3) of
15 Subsection B of Section 30-31-23 NMSA 1978. "

16 Section 2. Section 30-31-23 NMSA 1978 (being Laws 1972,
17 Chapter 84, Section 23, as amended by Laws 1990, Chapter 19,
18 Section 5 and also by Laws 1990, Chapter 33, Section 1) is
19 amended to read:

20 "30-31-23. CONTROLLED SUBSTANCES-- POSSESSION PROHIBITED. --

21 A. It is unlawful for any person intentionally to
22 possess a controlled substance unless the substance was obtained
23 pursuant to a valid prescription or order of a practitioner
24 while acting in the course of his professional practice or
25 except as otherwise authorized by the Controlled Substances Act.

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1 It is unlawful for any person intentionally to possess a
2 controlled substance analog.

3 B. Any person who violates this section with respect
4 to:

5 (1) one ounce or less of marijuana is, for the
6 first offense, guilty of a petty misdemeanor and shall be
7 punished by a fine of not less than fifty dollars (\$50.00) or
8 more than one hundred dollars (\$100) and by imprisonment for not
9 more than fifteen days, and, for the second and subsequent
10 offenses, guilty of a misdemeanor and shall be punished by a
11 fine of not less than one hundred dollars (\$100) or more than
12 one thousand dollars (\$1,000) or by imprisonment for a definite
13 term less than one year, or both;

14 (2) more than one ounce and less than eight
15 ounces of marijuana is guilty of a misdemeanor and shall be
16 punished by a fine of not less than one hundred dollars (\$100)
17 or more than one thousand dollars (\$1,000) or by imprisonment
18 for a definite term less than one year, or both; or

19 (3) eight ounces or more of marijuana is guilty
20 of a fourth degree felony and shall be sentenced pursuant to the
21 provisions of Section 31-18-15 NMSA 1978.

22 C. Except for those substances listed in Subsection D
23 of this section, any person who violates this section with
24 respect to any amount of any controlled substance enumerated in
25 Schedule I, II, III or IV or a controlled substance analog of a

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1 substance enumerated in Schedule I, II, III or IV is guilty of a
2 misdemeanor and shall be punished by a fine of not less than
3 five hundred dollars (\$500) or more than one thousand dollars
4 (\$1,000) or by imprisonment for a definite term less than one
5 year, or both.

6 D. Any person who violates this section with respect
7 to phencyclidine as enumerated in Schedule III or a controlled
8 substance analog of phencyclidine; [~~methamphetamine, its salts,
9 isomers or salts of isomers as enumerated in Schedule II or a
10 controlled substance analog of methamphetamine, its salts,
11 isomers or salts of isomers;~~] or a narcotic drug enumerated in
12 Schedule I or II or a controlled substance analog of a narcotic
13 drug enumerated in Schedule I or II is guilty of a fourth degree
14 felony and shall be sentenced pursuant to the provisions of
15 Section 31-18-15 NMSA 1978.

16 E. Any person who violates this section with respect
17 to methamphetamine, its salts, isomers or salts of isomers as
18 enumerated in Schedule II or a controlled substance analog of
19 methamphetamine, its salts, isomers or salts of isomers, is
20 guilty of a third degree felony and shall be sentenced pursuant
21 to the provisions of Section 31-18-15 NMSA 1978."